

### **REMARKS**

Claims 1-5, 7-14, 16-23, and 25-27 are pending in the present application. Claims 28-30 have been added, claims 6, 15, and 24 are cancelled, and claims 1, 7, 10, 16, 19 and 25 are amended. Support for the newly added claims may be found at least on page 9 of the specification. Reconsideration of the claims is respectfully requested.

#### **I. Examiner Interview**

Applicant thanks Examiner Paul Yanchus for the courtesies extended Applicant's representative during the August 15, 2005 telephone interview. During the interview, Applicant discussed amendments to independent claims 1, 10, and 19. Examiner Yanchus agreed that the above amendments would overcome the rejection of Applicant's claims under 35 U.S.C. § 102 as being anticipated by *Bizzarri* (U.S. Patent No. 5,732,268). The reasons discussed as well as additional reasons that the claims are not anticipated are set forth in the remarks below.

#### **II. 35 U.S.C. § 102, Anticipation: Claims 1, 7-11, 15-20 and 24-27**

The examiner has rejected claims 1, 7-11, 15-20 and 24-27 under 35 U.S.C. § 102(b) as being anticipated by *Bizzarri* (U.S. Patent No. 5,732,268) (hereinafter "*Bizzarri*"). This rejection is respectfully traversed.

Regarding claims 1 and 8, *Bizzarri* discloses a computing system aiding in the operation diagnostic and maintenance functions of remote computing devices, the system comprising:

- a plurality of remote computing devices coupled to a network, wherein each said remote computing device runs under a respective first boot image [column 5, lines 10-20 and lines 45- 47];

- a process initiator, coupled to a user interface, that allows for the selection of a particular remote computing device [column 6, lines 43-59];

- a download director that controls a download of a maintenance boot image [slave kernel] to the particular remote computing device via a network [column 7, lines 8-14];

- a reboot director connected to initiate a reboot process of the particular remote computing device [column 7, lines 15-20];

- wherein said process initiator, said download director, and said reboot director are connected such that, upon initiation by said process initiator, said download director downloads a temporary boot image [slave kernel, column 7, lines 8-14] to the particular remote computing device and said reboot director causes the particular remote computing device to reboot using said temporary boot image [column 7, lines 15-20], then upon completion of a given task [diagnostic programs, column 7, lines 38-40], said download director downloads

said respective first boot image to the particular remote computing device [restoration of files on local media, column 7, lines 50-60] and said reboot director causes the particular remote computing device to reboot using said first boot image [column 10, lines 1-16].

Regarding claim 2, Bizzarri further discloses that the process initiator initiates a diagnosis and repair mode of operation on the particular remote computer device [column 6, lines 55-58].

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A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983).

*Bizzarri* fails to teach or disclose each and every feature of the presently claimed invention as recited in independent claim 1. Amended independent claim 1, which is representative of other rejected independent claims 10 and 19 with respect to similarly recited subject matter, claims as follows:

1. A computing system aiding in the operation diagnostic and maintenance functions of a remote computing devices, the diagnostic system comprising:
  - a plurality of remote computing devices coupled to a network, wherein each said remote computing device runs under a respective first boot image;
  - a process initiator on a server, coupled to a user interface, that allows for the selection of a particular remote computing device from said plurality of remote computing devices;
  - a download director that controls a download of a maintenance boot image to the particular remote computing device via the network;
  - a reboot director connected to initiate a reboot process of the particular remote computing device;
  - a daemon on the server, monitoring the particular remote computing device for the completion of a given task;
  - wherein said process initiator, said download director, and said reboot director are connected such that, upon initiation by said process initiator, said download director downloads a temporary boot image to the particular remote computing device, said reboot director causes the particular remote computing device to reboot using said temporary boot image, and said daemon monitors the

remote computing device for completion of a given task associated with the temporary boot image, then upon completion of the given task, said download director downloads said respective first boot image to the particular remote computing device and said reboot director causes the particular remote computing device to reboot using said first boot image.

*Bizzarri* fails to teach or disclose "a process initiator on a server, coupled to a user interface, that allows for the selection of a particular remote computing device from said plurality of remote computing devices," as is recited in amended claim 1. The Examiner believes *Bizzarri* discloses this feature at column 6, lines 43-59. *Bizzarri* teaches:

Depending on the specific embodiment, a user or an automatic software kernel at a remote unit 13 is notified of a machine in need of service in one or more of a variety of ways. In the case of a large commercial network, there may be a specific node designated as the diagnostic and repair center, and this node may be in service at all times with a technician in attendance and the E-BIOS host active. In this case, when a PC on the LAN goes down and can't reboot, and the E-BIOS at the failed PC signals for remote service, an on-screen message can be used to alert the service technician, perhaps coupled with an audio signal. In situations where a service technician might be running another program at the time a request is logged, there can still be an on-screen message or icon to alert the technician to boot the host software and initiate diagnosis and repair for the offending PC.

*Bizzarri*, column 6, lines 43-59.

As shown above, *Bizzarri* merely discloses notification of a user or an automatic software kernel that a PC has failed to reboot via a BIOS code portion at the failed client. A client that fails to boot must establish a communication connection with a repair facility to notify the diagnostic facility of the individual PC's failure to boot via the BIOS code portion at the failed client." Because a failed PC notifies the repair facility of a failure to boot, no selection process at the server is taught by *Bizzarri*. In fact, *Bizzarri* does not even mention selection of a computing device in this, or any other section of the reference. Nor does *Bizzarri* teach, disclose, or even mention "a process initiator on a server." In contradistinction, the presently claimed invention in amended claim 1 claims "a process initiator on a server" that allows for selection of a particular remote computing device. Therefore, *Bizzarri* fails to teach or disclose "a process initiator on a server, coupled to a user interface, that allows for the selection of a particular remote computing device from said plurality of remote computing devices," as is recited in amended claim 1.

Furthermore, *Bizzarri* also fails to teach or disclose "a plurality of remote computing devices coupled to a network, wherein each said remote computing devices runs under a respective first boot image," as is claimed in independent claim 1. The Examiner states this feature is taught at column 5, lines 10-20 and lines 45-47. *Bizzarri* teaches as follows:

In considering the relative importance or desirability of an automatic software kernel or human-directed operation, one attractive alternative is to provide, for a number of PCs, a diagnostic center wherein some PCs are equipped with the AS interface and some are human-directed.

*Bizzarri*, column 5, lines 42-47.

FIG. 1 is a block diagram of a local E-BIOS PC 11 connected to a remote E-BIOS diagnostic and repair facility 13 by a communication link 15. A means of communicating is necessary for practicing the invention, but link 15 can be any of several well-known types, such as a serial link, a telephone modem connection, or a wide-area or a local area network connection. PC 11 has a unique E-BIOS 17 rather than a conventional PC BIOS, and facility 13 is equipped with code for cooperating with E-BIOS PC 11 over connection 15. This E-BIOS code in FIG. 1 is designated E-BIOS Host 19, and comprises a master kernel 20 and a slave kernel 22.

*Bizzarri*, column 5, lines 10-20.

Here, *Bizzarri* discloses that a local client PC may be connected to a remote diagnostic facility via a network connection. PCs at the diagnostic facility may be equipped with automatic software (AS) kernel and some may be human-directed. However, *Bizzarri* does not discuss a plurality of remote computing devices running under a first boot image. Therefore, *Bizzarri* fails to teach or disclose "a plurality of remote computing devices coupled to a network, wherein each said remote computing device runs under a respective first boot image," as is claimed in independent claim 1.

*Bizzarri* does not teach or disclose "a daemon on the server, monitoring the particular remote computing device for the completion of a given task," as is now recited in amended claim 1. This feature is entirely absent from the cited reference. *Bizzarri* teaches as follows:

Considering an embodiment of the invention under human control, after slave kernel 22 is downloaded and tested, an interface at the diagnostic PC is provided emulating the keyboard, screen, and floppy drive of the failed computer, providing a local environment at the diagnostic PC just as if the technician has traveled to the failed PC

*Bizzarri*, column 7, lines 25-30.

As shown above, *Bizzarri* merely teaches that an interface can be provided between a failed PC and a diagnostic PC to emulate the keyboard, screen, and floppy drive of the failed computer. However, such teachings do not disclose "monitoring the particular remote computing device for the completion of a given task," as is recited in claim 1. In fact, *Bizzarri* does not teach, disclose or even mention a monitoring function or monitoring for completion of a given task anywhere in the cited reference. Nor does *Bizzarri* teach, disclose or even mention "a daemon" monitoring a computing device in this, or any other section of the reference. Thus, *Bizzarri* fails to teach or disclose a "daemon on the server, monitoring the particular remote computing device for completion of a given task," as is now recited in amended claim 1.

*Bizzarri* also fails to teach or disclose "said process initiator, said download director, and said reboot director are connected such that, upon initiation by said process initiator, said download director downloads a temporary boot image to the particular remote computing device, said reboot director causes the particular remote computing device to reboot using said temporary boot image, and said daemon monitors the remote computing device for completion of a given task associated with the temporary boot image, then upon completion of the given task, said download director downloads said respective first boot image to the particular remote computing device and said reboot director causes the particular remote computing device to reboot using said first boot image," as is recited in amended claim 1. For example, *Bizzarri* teaches as follows:

Considering an embodiment of the invention under human control, after slave kernel 22 is downloaded and tested, an interface at the diagnostic PC is provided emulating the keyboard, screen, and floppy drive of the failed computer, providing a local environment at the diagnostic PC just as if the technician has traveled to the failed PC

*Bizzarri*, column 7, lines 25-30.

He or she may then run diagnostic and repair programs such as FDISK, CHKDISK, and SCANDISK, which are familiar to user's of DOS and Windows™ programs.

*Bizzarri*, column 7, lines 38-40.

Here, *Bizzarri* merely teaches that an interface can be provided at a remote PC to emulate the keyboard, screen, and floppy drive of a failed computer. A technician at the remote PC may run diagnostic programs on the failed computer from the remote PC via the interface. *Bizzarri* also teaches:

In addition to diagnosing and repairing code and data on a hard disk, other functions may be performed from the diagnostic and repair PC after connection and establishing the slave kernel on the failed PC. Among these are remote operation of all interactive BIOS functions, retrieval and restoration of files on local media, running diagnostics (as described above), retrieval of system configuration information, such as system registry, CMOS, desktop management files (DMI), and any other information typically available to the BIOS or operating system.

*Bizzarri*, column 7, lines 50-60.

16. A method for diagnosing and modifying code and data in read/write memory devices and mass storage devices of a first computer, comprising steps of:

- (a) establishing communication link with the first computer over a communication link from a diagnostic and repair computer;
- (b) loading and executing a master kernel at the diagnostic and repair computer;
- (c) downloading a slave operating system kernel to the first computer from the second computer; and
- (d) accessing and modifying code and data on read/write memory devices and mass storage devices in the first computer through activity at the second computer.

*Bizzarri*, column 10, lines 1-16.

As can be seen, *Bizzarri* discloses that a failed PC utilizes a BIOS code at the failed PC to establish a communication link to a diagnostic and repair computer and initiates execution of a master kernel at the repair computer in order to obtain a slave kernel that will permit the failed PC to be returned to operational condition. Although *Bizzarri* may teach that the diagnostic computer may modify and repair code and data at the failed client via a slave kernel, *Bizzarri* does not teach downloading a temporary boot image to a remote computing device, rebooting the device using the temporary boot image, and, upon completion of a given task, downloading the original first boot image and rebooting the device using the first boot image.

The Examiner believes downloading the original first boot image to the remote computing device and rebooting using the first boot image is taught at column 7, lines 50-60, and column 10, lines 10-16, which are quoted above. As discussed above, the cited portions of

*Bizzarri* teach a BIOS code portion at a failed client initiates a communication link with a diagnostic and repair computer to execute a master kernel which downloads a slave kernel to the failed client. An interface between the failed client and the repair computer may be enabled following download of the slave kernel. A technician at the repair computer may perform remote operations on the failed client, including retrieval and restoration of files on local media at the failed client. However, the cited portions of *Bizzarri* do not teach downloading a temporary boot image to a particular remote computing device, reboot the particular remote computing device using the temporary boot image and, upon completion of a given task, download the original first boot image to the remote computing device and reboot the computing device using the first boot image. In fact, the cited portions of *Bizzarri* do not even mention rebooting the particular remote computing device using a temporary boot image or rebooting using the original first boot image, "upon completion of the given task," as is recited in claim 1.

Furthermore, as discussed above, *Bizzarri* does not teach or suggest a daemon monitoring the remote computing device for completion of a given task associated with the temporary boot image. Nor does *Bizzarri* teach or disclose downloading the first boot image, or any other boot image, upon completion of the given task. Therefore, *Bizzarri* fails to teach or disclose "said download director downloads a temporary boot image to the particular remote computing device, said reboot director causes the particular remote computing device to reboot using said temporary boot image, and said daemon monitors the remote computing device for completion of a given task associated with the temporary boot image, then upon completion of a given task, said download director downloads said respective first boot image to the particular remote computing device and said reboot director causes the particular remote computing device to reboot using said first boot image," as is recited in amended claim 1.

Thus, *Bizzarri* fails to teach each and every claim limitation of the presently claimed invention in amended independent claim 1. Therefore, *Bizzarri* does not anticipate independent claim 1. Independent claims 10 and 19 recite subject matter addressed above with regard to claim 1 and are allowable over *Bizzarri* based on the same rationale set forth above with regard to claim 1. At least by virtue of their dependency on independent claims 1, 10, and 19, dependent claims 2, 7-9, 11, 16-18, 20, and 25-27 are patentable over *Bizzarri*. In addition, dependent claims 2, 7-9, 11, 16-18, 20, and 25-27 recite additional combinations of features not taught or disclosed by *Bizzarri*.

For example, with regard to claim 2, *Bizzarri* does not teach a process initiator "selecting a specific operation mode of the particular remote computing device." The Examiner alleges this feature is taught at column 6, lines 55-58 which teaches as follows:

In situations where a service technician might be running another program at the time a request is logged, there can still be an on-screen message or icon to alert the technician to boot the host software and initiate diagnosis and repair for the offending PC.

*Bizzarri*, column 6, lines 55-58.

Here, as described above with regard to claim 1, *Bizzarri* merely describes notification of a user or automatic software kernel at a remote unit that a PC has failed to boot. Notification may occur by means of an on-screen message to alert the technician. *Bizzarri* does not teach "selecting a specific operation mode of the particular remote computing device," as is recited in claim 2.

As a further example, regarding claims 7, 16, and 25, *Bizzarri* fails to teach "a signal from the particular remote computing device." The Examiner believes this feature is disclosed by *Bizzarri* at column 7, lines 25-30, which is quoted above. As discussed in regard to claim 1, this portion of *Bizzarri* merely teaches an interface can be provided at a remote PC to emulate the keyboard, screen, and floppy drive of a failed computer after a slave kernel is downloaded to the failed PC. This portion of *Bizzarri* does not teach "a signal from the particular remote computing device," as is claimed in claims 7, 16, and 25.

In regard to claim 9, *Bizzarri* fails to disclose "the process initiator is an independent diagnostic program, the independent diagnostic monitor initiating the selection of the particular remote computing device based upon specified criteria, the criteria of the remote system being monitored by the diagnostic program." The Examiner alleges this feature is disclosed by *Bizzarri* at column 6, lines 43-59, which is quoted above. As discussed above in regard to claim 1, this portion of *Bizzarri* discloses notification of a user or an automatic software kernel that a PC has failed to reboot. Notification of a failure to boot may occur in a number of ways including display of an on-screen message coupled with an audio signal. The cited portion of *Bizzarri* does not teach or disclose the process initiator is an independent diagnostic program, the independent diagnostic monitor initiating the selection of the particular remote computing device based upon specified criteria, the criteria of the remote system being monitored by the diagnostic program," as is recited in dependent claim 9.



With regard to dependent claim 11 and 20, *Bizzarri* does not teach “downloading a copy of said first boot image prior to said second reboot process.” The Examiner alleges this feature is disclosed at column 7, lines 50-60, which is quoted above. As discussed above, this cited portion of *Bizzarri* teaches that a diagnostic computer may perform other functions, in addition to diagnosing and repairing code and data on the failed PC. Although *Bizzarri* may teach that retrieval and restoration of files on local media may be possible after establishing the slave kernel on a failed PC, *Bizzarri* does not teach downloading the original first boot copy prior to performing a second reboot. Therefore, *Bizzarri* fails to teach or disclose “downloading a copy of said first boot image prior to said second reboot process,” as is recited in claims 11 and 20.

Therefore, the rejection of claims 1, 7-11, 15-20 and 24-27 under 35 U.S.C. § 102(b) has been overcome.

Furthermore, *Bizzarri* does not teach, suggest, or given any incentive to make the needed changes to reach the presently claimed invention in independent claims 1, 10, and 19. *Bizzarri* actually teaches away from the presently claimed invention in independent claims 1, 10, and 19 because it teaches a failed PC establishes a communication connection with a remote diagnostic and repair computer and downloading a slave kernel to the failed PC, as opposed to selecting a remote computing device from a plurality of remote computing devices, downloading a maintenance boot image, and, upon completion of a given event, downloading the original first boot image and rebooting the computing device using the first boot image, as in the presently claimed invention in independent claims 1, 10, and 19. Absent the examiner pointing out some teaching or incentive to implement *Bizzarri* and selecting a remote computing device from a plurality of remote computing devices, downloading a maintenance boot image, and, upon completion of a given task, downloading the original first boot image and rebooting the computing device using the first boot image, one of ordinary skill in the art would not be led to modify *Bizzarri* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Bizzarri* in this manner, the presently claimed invention in independent claims 1, 10, and 19 can be reached only through an improper use of hindsight using the applicants’ disclosure as a template to make the necessary changes to reach the claimed invention.

**III. 35 U.S.C. § 103, Obviousness: Claims 2-5, 12-14 and 21-23**

The examiner has rejected claims 2-5, 12-14 and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over *Bizzarri*. This rejection is respectfully traversed.

**A. Claims 2-4, 12-13, and 21-22.**

Regarding claims 2-4, 12-13 and 21-22, *Bizzarri* does not explicitly disclose downloading a particular boot image selected from a plurality of boot images, which perform different tasks. *Bizzarri* instead discloses downloading a single boot image capable of performing a plurality of tasks. It would have been obvious to one of ordinary skill in the art to modify the *Bizzarri* system to download a boot image, which performs only a specifically desired task, selected from a plurality of boot images instead of a single boot image which performs a plurality of tasks in order to reduce the size of the boot image and consequently reducing the time required to download the boot image and shortening the downtime of the remote computer device.

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**1. The Examiner bears the burden of establishing a *prima facie* case of obviousness.**

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992).

**2. All claim limitations must be considered, especially when missing from prior art.**

For the reasons set forth above with regard to the rejection of independent claims 1, 10, and 19 under 35 U.S.C. § 102, *Bizzarri* fails to teach the features of independent claims 1, 10, and 19. Nor does *Bizzarri* suggest or provide any motivation for a plurality of remote computing devices running under a respective first boot image, selecting a particular remote computing device from the plurality of remote computing devices, downloading a maintenance boot image, and, upon the completion of a given event, downloading the original first boot image to the particular remote computing device and rebooting the device using the first boot image, as is claimed in independent claims 1, 10, and 19. Thus, independent claims 1, 10, and 19 cannot be obvious in view of *Bizzarri* because the features believed to be disclosed by the cited reference are not disclosed by *Bizzarri*. At least by virtue of their dependency on independent claims 1,

10, and 19, dependent claims 2-4, 12-13, and 21-22 are distinguishable over *Bizzarri* for the same reasons set forth above with regard to independent claims 1, 10, and 19. Moreover, because the features of independent claims 1, 10, and 19 are not taught or suggested by *Bizzarri*, any proposed modification of *Bizzarri* to include the additional features of dependent claims 2-4, 12-13, and 21-22 would not be sufficient to reach the presently claimed invention.

Moreover, *Bizzarri* fails to teach the specific features claimed in claim 2, for the reasons set forth above in regard to the rejection of claim 2 under 35 U.S.C. § 102. Moreover, *Bizzarri* fails to teach or suggest, the specific features recited in dependent claims 2-4, 12-13, and 21-22. Claim 3, which is representative of other rejected dependent claims 2-4, 12-13, and 21-22 with respect to similarly recited subject matter, claims as follows:

3. The system of claim 2, wherein the selection of a specific operational mode results in a download of a particular temporary boot image from among a plurality of boot images.

The Examiner acknowledges that *Bizzarri* does not disclose downloading a particular boot image selected from a plurality of boot images, which performs different tasks. However, the Examiner believes it would have been obvious to one of ordinary skill in the art to modify *Bizzarri* to download a boot image which performs a specifically desired task, selected from a plurality of boot images instead of a single boot image which performs a plurality of tasks.

3. **Stating that it is obvious to try or make a modification without a suggestion in the prior art is not *prima facie* obviousness.**

The mere fact that a prior art reference can be readily modified does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Laskowski*, 871 F.2d 115, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1989); *see also In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992); *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1993). The Examiner may not merely state that a modification would have been obvious to one of ordinary skill in the art without pointing out in the prior art a suggestion of the desirability of the proposed modification.

The present invention in dependent claims 2-4, 12-13, and 21-22 includes the feature of an operational mode of the particular remote computing device and downloading "a particular temporary boot image from among a plurality of boot images." The present invention in

dependent claims 4, 13, and 22 also recite “each of the plurality of boot images is operable to perform a particular maintenance or diagnostic task.” In contrast, *Bizzarri* teaches a code portion in BIOS that establishes a communication link with a remote computer upon failure of the CPU to boot properly and downloading a slave kernel to the failed PC to create an interface between the failed PC and the repair and diagnostic computer. However, *Bizzarri* does not teach or suggest a specific operational mode that results in “download of a particular temporary boot image from among a plurality of boot images” or “each of the plurality of boot images is operable to perform a particular maintenance or diagnostic task on the particular remote computing device,” as is recited in dependent claims 2-4, 12-13, and 21-22.

A proper *prima facie* case of obviousness must be supported by some teaching or suggestion in the prior art reference. *Bizzarri* does not give any teaching, suggestion, or incentive for “a specific operational mode results in a download of a particular temporary boot image from among a plurality of boot images” and “each of the plurality of boot images is operable to perform a particular maintenance or diagnostic task,” as is claimed in dependent claims 2-4, 12-13, and 21-22. The Examiner states it would have been obvious to one of ordinary skill in the art to modify *Bizzarri* to download a boot image which performs a specifically desired task, selected from a plurality of boot images instead of a single boot image which performs a plurality of tasks in order to reduce the size of the boot image and the time required to download the boot image and shortening the downtime of the remote computing device. However, the Examiner has merely stated an alleged advantage for the modification, rather than a teaching or suggestion for the modification.

Furthermore, nowhere does *Bizzarri* teach, suggest, or given any incentive to download a particular boot image selected from a plurality of boot image, which performs different tasks. *Bizzarri* only teaches downloading a slave kernel to a failed PC to establish an interface with a diagnostic and repair facility. Therefore, the Examiner has not pointed out any teaching, suggestion, or incentive in the prior art for “a specific operational mode results in a download of a particular temporary boot image from among a plurality of boot images” and “each of the plurality of boot images is operable to perform a particular maintenance or diagnostic task,” as is claimed in dependent claims 2-4, 12-13, and 21-22.

**4. The proposed modification would not be made when *Bizzarri* is considered as a whole.**

"It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Hedges*, 228 U.S.P.Q. 685, 687 (Fed. Cir. 1986). Thus, when *Bizzarri* is considered as a whole, *Bizzarri* addresses the problem of restoring a PC to operational status after a failure to boot. Unlike the presently claimed invention, *Bizzarri* teaches one to utilize a code portion in BIOS of a PC that has failed to boot to establish a communication connection with a remote diagnostic and repair computer and initiate execution of a master kernel at the diagnostic and repair computer to download a slave kernel to the failed computer. The slave kernel may then create an interface between the failed computer and the diagnostic and repair computer to enable repair of the failed PC.

In contradistinction, the presently claimed invention in claims 2-4, 12-13, and 21-22 recognizes the problem of temporarily replacing a first boot image in a remote PC with a "particular temporary boot image from among a plurality of boot images," wherein "each of the plurality of boot images is operable to perform a particular maintenance or diagnostic task on the particular remote computing device." When *Bizzarri* is considered as a whole, *Bizzarri* does not teach or suggest replacing a first boot image in a remote computing device with a particular temporary boot image from among a plurality of boot images to perform a maintenance or diagnostic task. Therefore, one of ordinary skill in the art would not be motivated to make the Examiner's proposed modifications to reach the presently claimed invention when *Bizzarri* is considered as a whole.

**5. The claimed invention may be reached only through an improper use of the disclosed invention as a template to modify the prior art to reach the claimed invention.**

Moreover, the Examiner may not make modifications to the prior art using the claimed invention as a model for the modifications. *In re Fritch*, 972 F.2d 1260, 23 U.P.Q.2d 1780, 1782-1784 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art has suggested the desirability of the modification." *Id.* In other words, unless some teaching exists

in the prior art for the suggested modification, merely asserting that such a modification would be obvious to one of ordinary skill in the art is improper and cannot be used to meet the burden of establishing a *prima facie* case of obviousness. Such reliance is an impermissible use of hindsight with the benefit of the applicant's disclosure.

Therefore, absent some teaching, suggestion, or incentive in the prior art, *Bizzarri* cannot be properly modified to form the claimed invention. As a result, absent some teaching, suggestion, or incentive from the prior art to modify the reference to reach the presently claimed invention in claims 2-4, 12-13, and 21-22, the presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of applicant's invention as a model. Therefore, it would not have been obvious to one of ordinary skill in the art to modify *Bizzarri* to reach the presently claimed invention claimed in dependent claims 2-4, 12-13, and 21-22.

**B. Claims 5, 14, and 23.**

Regarding claims 5, 14, and 23, *Bizzarri* does not explicitly disclose storing boot images on a remote storage media. However, storing software on remote storage media is well known in the art and it would have been obvious to one of ordinary skill in the art to use remote storage media to store the boot image.

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As discussed above with regard to dependent claims 2-4, 12-13, and 21-22, *Bizzarri* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention in dependent claims 2-4, 12-13, and 21-22. Dependent claims 5, 14, and 23 depend from dependent claims 3, 12, and 21, and, thus, these claims distinguish over *Bizzarri* under the same rationale as is discussed above with regard to claims 2-4, 12-13, and 21-22. Therefore, *Bizzarri* fails to teach or suggest the features recited in dependent claims 5, 14, and 23. Thus, the rejection of claims 5, 14, and 23, under 35 U.S.C. § 103 has been overcome.

Therefore, the rejection of claims 2-5, 12-14 and 21-23 under 35 U.S.C. § 103(a) has been overcome.

**IV. Conclusion**

It is respectfully urged that the subject application is patentable over *Bizzarri* and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,



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